IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5503 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD. BHIKHABHAI SAYABABHAI VAGHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5503 of 2001

MR BN PATEL for Petitioner No. 1-1/3/7

MS. SONAL VYAS, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/10/2002

ORAL JUDGEMENT

#. By filing this petition, the petitioners have prayed for quashing and setting aside the order passed by the

Joint Secretary (Appeals), Revenue Department, Gujarat State at Annexure-G.

#. The petitioners moved the application before the revenue authority for recording their names in the revenue record as occupants in connection with the land bearing Survey No.1140/3/3/ admeasuring 3 acres and 16 gunthas as well as Survey No.1140/4/2 admeasuring 0 acre and 26 gunthas of Palanpur Kasba. It seems that the Mamlatdar, Palanpur rejected the said prayer for entering the names of the petitioners in the revenue record for the aforesaid piece of land, by his order dated 14.8.1992. The said order was taken in appeal before the Deputy Collector by way of Appeal No.2 of 1993. Deputy Collector, Palanpur by his order dated 23.3.1993 rejected the said appeal. Deputy Collector found that the petitioners cannot be said to be in lawful possession of the suit land, and, therefore, their names cannot be entered in the revenue record. Deputy Collector also considered the definition of "occupant" as provided in section 3(16) of the Bombay Land Revenue Code. The said order was again taken in revision before the Collector, Banaskantha, who dismissed the said revision application and ultimately by the impugned order at Annexure-G, the Secretary, Revenue Department, also rejected revision application. All the authorities have found that the petitioners cannot be held to be the occupants. It is also found that the petitioners cannot be held to be the owners of the land in question. The Secretary, by the impugned order, came to the conclusion as per the revenue record that the petitioners failed to establish their long and uninterrupted possession and that they were found to be in possession for some period, i.e. for the year or so. It is also found that the petitioners have failed to establish that, they are the heirs of the original occupant Sayba Jivraj. On the aforesaid ground, revision application was dismissed. The said order is challenged by way of this special civil application.

#. At the time of hearing of this petition, Mr.Patel, learned advocate, for the petitioners, submitted that, even though, names of the petitioners are not shown in the revenue record and it were appearing only for the limited period, the petitioners are in continuous and physical possession of the suit land all throughout. He submitted that, therefore, even if the petitioners cannot be held to be the occupiers, at least, on the basis of their long possession and since they are willing to purchase the land as per the Government rules, the land in question is required to be granted in favour of the petitioners.

#. Under these circumstances, Mr.Patel submitted that the petitioners would like to make necessary application to the Collector for granting the land in question in their favour by paying necessary occupancy price and as per the Resolution and Circular of the Government. He, therefore, wants to withdraw this petition in order to file necessary application for granting the land in question on payment of reasonable occupancy price. Permission is granted accordingly. The petition stands disposed of as withdrawn. Rule is discharged with no order as to costs.

#. It is clarified that, if any such application is made for granting the land in question, the same may be considered by the Collector on its own merits and in accordance with law without being prejudiced by the earlier orders passed by the authorities. It is also clarified that, this Court has not expressed any opinion, whether such land can be granted to the petitioners as per the provisions of the Bombay Land Revenue Code or not, and, it is for the Collector to examine such question in accordance with law and as per the Government Resolution in this behalf. The Collector may also consider the Government Resolution/Circular and policies in this behalf. Mr.Patel states that the petitioners will file such application by 30.10.2002. If any such application is made before the Collector, the Collector shall dispose of the same within a period of two months from the date of receipt of the same. Status quo as on today to be maintained upto 31.12.2002.

#. The petitioners may take direct service of the writ of this order.

(P.B.Majmudar,J)
(pathan)